

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into
Implementation of Senate Bill 669 and
Assembly Bill 1734, As They Affect the
Deaf and Disabled Telecommunications
Equipment and Services Program Fund

Rulemaking 03-03-014
(Filed March 13, 2003)

Order Instituting Rulemaking Into
Implementation of Senate Bill 669, As
It Affects California High-Cost Fund A;
California High-Cost Fund B; Universal
Lifeline Telephone Service Trust;
Payphone Service Providers
Enforcement; Telecommunications
Devices for the Deaf Interim Placement
Committee; Public Policy Payphone
Program; and California Teleconnect
Fund

Rulemaking 01-08-002
(Filed August 2, 2001)

**ASSIGNED COMMISSIONER'S RULING REGARDING
REOPENING PROCEEDINGS AND MODIFICATION OF
DECISION 03-06-070 AND DECISION 02-04-059**

I. Summary

This Ruling provides notice and the opportunity for comment and submits
for the Commission's consideration the modification of Decision (D.) 03-06-070¹

¹ Decision Implementing Senate Bill 669 and Assembly Bill 1734 As They Affect the Deaf and Disabled Telecommunications Program (June 19, 2003), in Rulemaking (R.) 03-03-014, Rulemaking Into Implementation of Senate Bill 669 and Assembly Bill 1734, As They Affect the Deaf and Disabled Telecommunications Equipment and Services Program Fund (Filed March 13, 2003).

and Decision (D.) 02-04-059² in order to transfer advisory board responsibility for the TTY Placement Program (TPP)³ from the Payphone Service Providers Committee (PSPC) to the Telecommunications Access for the Deaf and Disabled Administrative Committee (TADDAC). The draft modified decisions, attached hereto, include revised charters for both the PSPC and the TADDAC reflecting the transfer of TPP advisory responsibility. I respectfully recommend that both decisions be put on the earliest possible Commission agenda, consistent with allowing reasonable comment opportunity by all interested parties.

II. Discussion

In D.02-04-059, the Commission approved new interim charters for all telecommunications advisory boards except the TADDAC (discussed below). In reaching our decision, the Commission considered parties' comments that the Commission should place advisory responsibility for the TPP under the Deaf and Disabled Telecommunications Program (DDTP) Administrative Committee (predecessor of the TADDAC), because the interests involved in the TPP are "more closely aligned" with the DDTP Administrative Committee than with the PSPC.

At that time, however, Public Utilities (P.U.) Code section 279(a) provided that

There is hereby created the Payphone Service Providers Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of programs to educate payphone service providers, ensure compliance with the commission's requirements for payphone operations, and educate consumers on matters related to payphones, as provided for in commission Decision 90-06-018, *and to provide for the placement of telecommunications devices capable of servicing the needs of the deaf or the hearing impaired in existing buildings and public accommodations, as specified in subdivision (a) of Section 2881.2.* (Emphasis added.)

² Opinion on remaining Advisory Board Issues (April 22, 2002), in R.01-08-002, Rulemaking Into Implementation of Senate Bill 669, As It Affects California High-Cost Fund A; California High-Cost Fund B; Universal Lifeline Telephone Service Trust; Payphone Service Providers Enforcement; Telecommunications Devices for the Deaf Interim Placement Committee; Public Policy Payphone Program; and California Teleconnect Fund (Filed August 2, 2001).

³ The TTY Placement Program is also called the Telecommunications Devices for the Deaf Interim Placement Committee (TPIC) program, and the names are used interchangeably herein.

Based on this clear statutory language, we correctly concluded that the Commission could not address a proposal to transfer advisory responsibility over the TPP from the PSPC to the DDTP Administrative Committee because, “absent a statutory amendment” that redefines both advisory boards’ purposes, “we lack authority to order such a transfer. . . .” D.02-04-059, mimeo at 15. Thus, the PSPC charter the Commission adopted includes advisory responsibility for the TPP (called the TPIC program).

In D.03-06-070, the Commission adopted a new charter for the TADDAC and its two advisory boards. Once again, the Commission considered parties’ comments that the TPP “should be under the purview of the DDTP program, rather than the Payphone Service Providers Committee (PSPC).” D.03-06-070, mimeo at 4. Although we recognized “compelling reasons for placing the TTY Placement Program under the auspices of the TADDAC,” we also correctly determined that, at that time, PU Code section 279(a) placed the TPP under the advisory responsibility of the PSPC. D.03-06-070, mimeo at 6 (“we are constrained by the clear language of § 279(a), which places the TTY Placement Program under the auspices of the PSPC”) and Conclusion of Law 1 (“Public Utilities Code Section 279(a) precludes the Commission from ordering the transfer of the TTY Placement Program from the PSPC to the DDTP program”). We properly concluded that we do not have authority to move that responsibility “[w]ithout a change in the law.” D.03-06-070, mimeo at 6.

On October 8, 2003, Governor Davis signed Senate Bill (SB) 168 (Ch. 733, Stats. 2003) into law. Effective January 1, 2004, SB 168 omits the language in PU Code section 279(a) requiring the PSPC to advise the Commission on the TPP.⁴ Thus, the statutory impediment to the transfer of TPP advisory responsibility from

⁴ Section 6 of SB 168 amends P.U. Code section 279 to read:

There is hereby created the Payphone Service Providers Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of programs to educate payphone service providers, ensure compliance with the commission’s requirements for payphone operations, and educate consumers on matters related to payphones, as provided for in commission Decision 90-06-018.

the PSPC to the TADDAC no longer exists. The Commission is now able to do what we saw “compelling reasons” to do in D.03-06-070. By the two draft decisions attached, the Commission does so, by:

- (1) reopening R.03-03-014 and modifying D.03-06-070, including approving a revised TADDAC charter reflecting the new TPP advisory responsibility; and
- (2) reopening R.01-08-002 and modifying D.02-04-059, including approving a revised PSPC charter reflecting the transfer of TPP advisory responsibility to the TADDAC.

IT IS HEREBY RULED THAT:

1. Modification of Decision (D.) 02-06-070 and D.02-04-059, in the form of the draft decisions attached to this Ruling, would effectuate the Commission’s prior recognition of “compelling reasons” for transferring advisory responsibility of the TTY Placement Program (TPP) from the Payphone Service Providers Committee (PSPC) to the Telecommunications Access for the Deaf and Disabled Administrative Committee (TADDAC).
2. This ruling and the attached draft decisions shall be served on all parties to Rulemaking (R.) 03-03-014 and R.01-08-002 to provide notice that these proceedings are reopened and an opportunity to comment on the draft decisions exists.
3. Comments shall be filed and served on or before thirty days after the mailing date of this ruling. Reply comments shall be filed on or before 45 days after the mailing date of this ruling. No hearings are necessary because the only change being considered is one of law, specifically the impact of the revision to Public Utilities Code section 279(a) resulting from the enactment of Senate Bill 168.

4. These draft decisions, modified as may be appropriate to reflect comments received, should be placed on the first Commission meeting following the conclusion of the comment opportunity for consideration by the full Commission.

Dated this 30th day of March, 2004.

/s/ Susan P. Kennedy

Susan P. Kennedy
Assigned Commissioner